IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2651 OF 2006

Deepak Kundandas Nagpal ..Petitioner.

Vs.

State of Maharashtra & Ors. ..Respondents.

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Mr. Kevic Setalwad with Ms. Ashwini Rupji for the Petitioner.
Mr. G.W. Mattos, AGP for Respondents 1, 3 and 4.
Ms. Kiran Bagalia for Respondent No.6.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th October, 2006.

P.C. :

1. The commercial structures in the use, occupation and possession of the Petitioner are obstructing the Andheri-Ghatkopar Link Road road widening project and are required to be removed. The work has been undertaken by MMRDA as a part of the Mumbai Urban Infrastructure Project (MUIP). Under a Government Resolution dated 14th November, 2005 the policy pertaining to the rehabilitation of project affected persons under the Mumbai Urban Transport Project (MUTP) was also extended to persons who are affected and who come within the purview of

MUIP. Such persons are eligible to permanent alternate accommodation.

2. In the petition, the grievance of the Petitioner relates to an order dated 15th April, 2006 passed by the Deputy Collector, Encroachment and Removals, the Third Respondent to these proceedings. By his order the Third Respondent held that the Petitioner was eligible only in respect of one commercial unit for alternate accommodation. The Petitioner has not been found to be eligible in respect of three other commercial units. In the affidavit in reply that has been filed on behalf of the Third Respondent, it has been stated that initially a survey was carried out by the Eighth Respondent of the structures that would come in the way of the project and a list was forwarded to the Second Respondent. The Second Respondent in turn forwarded the list to the Third Respondent for deciding eligibility. Initially on perusing the documents submitted by the Petitioner, the Third Respondent came to the conclusion that the Petitioner was entitled to one alternate accommodation. Though the Petitioner had claimed four independent structures, he had submitted only one licence under the Shops and Establishment Act, 1948 in respect of the four

structures. The Petitioner had submitted copies of two electricity bills, one of which was for commercial user, while the other was for residential user. According to the Third Respondent the Petitioner has inflated the area in his use, occupation and possession, and the correct area in the occupation of the Petitioner was as follows :

"(a)	Gala No.8 admeasures 32 x 10	= 320 sq.ft.
(b)	Gala No.9 admeasures 32 x 24	= 782 sq.ft.
(c)	Gala No.10 admeasures 9 x 8	= 72 sq.ft.
(d)	Gala No.11 admeasures 15 x 8	= 120 sq.ft."

3. Initially, the Third Respondent had determined that the Petitioner would be eligible for alternate accommodation in respect of Gala No.11. On further scrutiny it has been found that the Petitioner would also be entitled to alternate accommodation in lieu of Gala No.9 in as much as he has submitted documentary evidence in the form of an electricity bill. In these circumstances, the Petitioner has been held to be eligible to the allotment of two units – in lieu of Gala Nos.9 and 11 respectively. Counsel appearing for the Second Respondent states that in pursuance of the policy of the Second Respondent, each of the units of alternate accommodation would admeasure 225 sq. ft., this being in

accordance with the concerned policy governing commercial and, as the case may be, residential structures.

4. At this stage, Counsel appearing for the Petitioner states that the Petitioner would produce relevant documentary material in order to facilitate a reconsideration of the claim of the Petitioner in respect of the remaining two Galas for which he was held to be ineligible. In the event that the Petitioner submits a further representation within a period of three weeks from today together with the relevant documentary material, the Third Respondent shall not be precluded by its earlier determination from considering as to whether the Petitioner has produced satisfactory proof in respect of the remaining two Galas. A final decision shall be taken upon the representation within a period of three months thereafter. In the event that the Petitioner is held to be eligible for additional alternate accommodation, the area in respect of the alternate accommodation shall abide by the existing policy of the Second Respondent. It is, however, clarified that the actual work of demolition in order to facilitate the work of road widening shall not be stalled or obstructed on the ground that the representation made by the Petitioner is under consideration.

The Petition is accordingly disposed of.